IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4157 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANJIBHAI BHURABHAI PATEL TANTI

Versus

STATE OF GUJARAT

Appearance:

MR PJ VYAS for Petitioners

MS KATHA GAJJAR, AGP for Respondent No.1 to 4

MR AK CLERK for Respondent No. 5

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: /12/2000

C.A.V. JUDGEMENT

1. This petition was admitted on 20-9-2000. So far, no counter affidavit has been filed by any of the respondents. However, the matter can be finally decided after hearing the learned counsel for the parties, even

without entertaining counter affidavits from the respondents.

2. Number of prayers have been made in this petition. The first prayer is that, the impugned judgment and order dated 15-10-1999/29-11-1999 of Additional Chief Secretary, Revenue Department (Appeals), Government of Gujarat, confirming the judgment and order dated 3-5-1994 of the Collector be quashed and set-aside. The second relief is that, it may be declared that the land in question is of the ownership of the petitioner. Other reliefs are interim in nature.

3. This Court, while admitting the petition on 20-9-2000, granted interim relief and directed the respondent no.2 to decide the appeal, which has been filed by the petitioner and which is pending within two months from the date of receipt of the order.

4. Shri PJ Vyas, learned counsel for the petitioner, Shri AK Clerk, learned counsel for the respondent no.5 and Ms.Gajjar, learned AGP for the respondent nos.1 to 4 were heard.

5. The brief facts are that, on 11-6-1937, through a deed Annexure-'A', the disputed land of Survey No.367 was allotted by the erstwhile ruler in favour of the grand-father of the petitioner. Relevant entries were made in the Khata vide Annexure-'B'. Proceedings were initiated before the City Survey Superintendent, Rajkot for scrutiny of rights of Ward No.7/2, etc. Annexure-'C' is the order dated 26-2-1993, in which it is found that Survey No.366 was different and out of Survey No.367. Against this order, which was the order for determination of title under sec.37(2) of the Bombay Land Revenue Code, an appeal was preferred by the petitioners under sec.203 of the Bombay Land Revenue Code. Annexure-'D' is the memorandum of said appeal, in which, dispute of title of these two survey numbers 367 and 366 was raised. The Assistant Collector, Rajkot dismissed the appeal on 10-6-1994 vide Annexure-'E'. Municipal Corporation, respondent no.5, also filed appeal against this order of the City Survey Superintendent, which was also dismissed vide Annexure-'G'. Annexure-'F' is the memorandum of appeal of Rajkot Municipal Corporation, respondent no.5. It is, thus, clear that the appeals were pending upto 10-6-1994. These were appeals arising out of proceedings under sec.37(2) of the Bombay Land Revenue Code. However, during pendency of these appeals, where the question of determination of title of the disputed land was involved, the Collector, under his order dated

3-5-1994 (i.e. prior to disposal of those appeals), directed that the land of Survey No.366 be transferred to Forensic Science Laboratory in view of demand made by it vide Annexure-'H'. Annexure-'I' shows that appeal of the petitioner was filed against the order of the City Survey Superintendent in proceedings for determination of title in land under sec.37(2) of the Bombay Land Revenue Code. This appeal was filed before the Collector, Rajkot, which was admittedly pending on 10-6-1994 when order contained in Annexure-'G' was passed on 10-6-1994. A revision was filed before the Tribunal, which was returned with the observation that the Secretary (Appeals) had no power and authority to entertain it. Consequently, revision was preferred before the Special Secretary (Appeals) vide Annexure-'J'. This was revision under sec.211 of the Bombay Land Revenue Code, which was dismissed on 15-10-1999 and rejection order was communicated to the petitioners on 29-11-1999 vide Annexure-'K'.

6. I do not propose to enter into the merits of the case because, the question of title is yet to be decided by the Collector before whom, the appeal is pending, which arise out of an order passed in proceedings under sec.37(2) of the Bombay Land Revenue Code.

7. This Court, on 20-9-2000, granted two months' time to the Collector to decide the pending appeal. That time has expired and no decision has been taken by the Collector. Till date, no definite information has been furnished by the learned AGP, that the said appeal has been decided by the Collector. On these facts, Shri PJ Vyas, learned counsel for the petitioner rightly contended that, since appeal arising out of proceedings for determination of title of land in Survey Nos.366 and 367 were pending, the order for allotment of land to the Forensic Science Laboratory is illegal and premature and the authorities could not have jumped to the conclusion that Survey No.366 is Government Waste Land and is distinct from Survey No.367. In view of the case reported in 31(2) GLR 1161, the impugned order of Additional Chief Secretary dated 15-10-1999 can not be sustained, unless dispute of title is resolved by the competent authority. The impugned order is thus rendered invalid.

8. Shri AK Clerk, learned counsel for the respondent no.5 suggested that the petition may be kept pending, and if decision is taken by the Collector in the pending appeal arising out of proceedings under sec.37(2) of the Bombay Land Revenue Code, the matter can be decided accordingly. I, however, do not think it expedient to

keep this petition pending for the reason that, even though decision is taken by the Collector in appeal, one way or the other, that can not validate the order dated 15-10-1999. Feeling aggrieved from the appellate order, the petitioners will have further remedy under the Statute, and after availing of that remedy, they can approach this Court by filing Writ Petition. In any way, the order of the Collector in appeal, which was not in existence when the impugned order dated 15-10-1999 was passed by the Additional Chief Secretary, subsequent order can not validate the impugned order retrospectively. As such, the impugned order has to be quashed and set aside. As a consequence thereof, the order of the Collector dated 3-5-1994, which has been confirmed in the impugned order has also to be quashed and set aside.

9. In view of the above discussion, the writ petition partly succeeds and is partly allowed. The impugned order dated 15-10-1999 contained in Annexure-'K' and Collector's order dated 3-5-1994 contained in Annexure-'H' are hereby set aside with no order as to costs.

Dated : /12/2000. [D.C. Srivastava, J.]

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